

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

FREDERICK CARTER	§	
VS.	§	CIVIL ACTION NO. 9:17-CV-40
BRAD LIVINGSTON, <i>et al.</i> ,	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ACCEPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION REGARDING
DEFENDANTS NGUYEN, JACKSON, MOORE AND STALINSKY

Plaintiff, Frederick Carter, an inmate formerly confined at the Polunsky Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint pursuant to 42 U.S.C. § 1983 against defendants Dr. Nguyen, FNP Diane Jackson, Kevin Moore and Drew Stalinsky.

The Court referred this matter to the Honorable Zack Hawthorn United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends granting the defendants' Motion for Summary Judgment (docket entry no. 148).

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the records, and pleadings. Plaintiff filed objections to the Report and Recommendation of United States Magistrate Judge (docket entry no. 150).¹ This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

Plaintiff merely reasserts his belief that the defendants acted with deliberate indifference and "incompetence" by denying plaintiff a handicap shower pass. Plaintiff ignores the Magistrate Judge's analysis regarding the limited duties of the two practice managers Stalinsky and Moore and

¹Plaintiff also appears to object to an order entered by the Magistrate Judge denying plaintiff's motion to amend and/or supplement. The court liberally construes this motion as a motion for reconsideration which will be addressed by separate order.

the record evidence that shows defendants Nguyen and Jackson fulfilled plaintiff's request for a handicap shower pass on April 17, 2015. After careful consideration, the court finds plaintiff's Objections are lacking in merit.

ORDER

Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ACCEPTED**.

Furthermore, this court believes that entry of Final Judgment pursuant to Federal Rule of Civil Procedure 54(b) is necessitated in this case. As outlined in a separate Memorandum Opinion and Order of Severance, plaintiff's claims as to defendants Martin and Glosson have yet to be resolved and, in light of the COVID-19 pandemic, there is no assurance plaintiff's claims against these defendants can be handled with dispatch. This court previously dismissed plaintiff's claims as to defendants Livingston, Harris and Martinez (docket entry nos. 97 & 113). While reversal of these claims and plaintiff's claims against defendants Nguyen, Jackson, Moore and Stalinsky is unlikely, any further delay could prove prejudicial as potential witnesses disappear and memories fade. As the defendants have already spent considerable time defending this case and the challenges imposed by the COVID-19 pandemic further complicate resolution of this entire matter, the court expressly finds there is no just reason for delay. A **FINAL JUDGMENT** will be entered by separate order pursuant to Federal Rule of Civil Procedure 54(b).

So ORDERED and SIGNED, Mar 03, 2021.



Ron Clark
Senior Judge